

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BILLY R. MCCAIG,)	
)	
Plaintiff,)	
)	
v.)	CIV-09-416-R
)	
MICHAEL ASTRUE, Commissioner)	
of Social Security)	
)	
Defendant.)	

ORDER

Plaintiff filed this action seeking review of the denial of his application for disability insurance benefits and supplemental security income benefits. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Doyle W. Argo for preliminary review. On March 23, 2010, Judge Argo issued a Report and Recommendation, wherein he recommended that the decision of the Commissioner be affirmed. The matter is currently before the Court on the Plaintiff's timely objection to the Report and Recommendation. As a result, the Court has undertaken a *de novo* review of those portions of the Report and Recommendation to which Plaintiff has raised specific objection.

Plaintiff challenged the administrative law judge's credibility analysis, specifically, he alleged the administrative law judge failed to analyze the impact his medications had on his concentration and his pace in light of his testimony about their side effects. Plaintiff testified at the hearing that as a result of the medications he takes daily for pain management, he feels dizzy and sick to his stomach. Tr. 35. He testified that after he takes pain medication he feels sleepy and he often takes naps after his medication. Tr. 36. In her decision denying Plaintiff benefits, the administrative law judge noted that "[t]he medications make him dizzy, sick to his stomach and

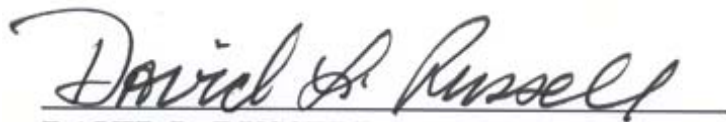
sleepy so he tries to avoid taking them unless necessary.” Tr. 21. The administrative law judge made no further mention of the side effects of the medication, which Plaintiff contends was in error and requires remand of this matter.

In objection to the Report and Recommendation, Plaintiff contends that the Magistrate Judge improperly provided post hoc reasoning to explain the shortcomings in the administrative law judge’s decision.

The medical records do not show that Plaintiff ever complained about any side effects or discussed them with his treating physician. The records do not reflect any request or attempt to adjust Plaintiff’s medications to minimize side effects. Plaintiff “did not present objective medical evidence that any side effects from [his] medication were in fact limiting.” *McKenzie v. Chater*, 69 F.3d 548, 1995 WL 649690, at *2 (10th Cir. Nov. 6, 1995). As a result, the administrative law judge was not required to discuss the side effects of Plaintiff’s medications in any greater detail, and the discussion in the Report and Recommendation is not improper post hoc rationalization.

For the reasons set forth herein, the Report and Recommendation is adopted in its entirety and the decision of the Commissioner is hereby affirmed. Judgment shall be entered accordingly.

IT IS SO ORDERED this 14th day of April 2010.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE